

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, - Docket No. 5:20-cr-341-FL-1
5 Plaintiff, - New Bern, North Carolina
6 v. - December 16, 2021
7 RICHARD RUBALACAVA, - Sentencing
8 Defendant. -

9
10 TRANSCRIPT OF SENTENCING HEARING
11 BEFORE THE HONORABLE LOUISE WOOD FLANAGAN
12 UNITED STATES DISTRICT JUDGE.

13 APPEARANCES:

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Proceedings recorded by mechanical stenography,
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1 (Commenced at 2:15 p.m.)

2 THE COURT: Are you Richard -- do you need
00:00:04 3 some time, counsel?

00:00:07 4 MR. GRAY: Your Honor, just to remind him to
00:00:09 5 speak into the microphone.

00:00:11 6 THE COURT: I can cover that. Keep your
00:00:13 7 mask on, over your nose too.

00:00:16 8 My name is Judge Flanagan. This is the time
00:00:18 9 the Court has set aside to sentence you for
00:00:23 10 participating in that riot in Raleigh.

00:00:30 11 I usually am spoken to by people who stand
00:00:34 12 up when they're addressing the Court, but because of
00:00:37 13 COVID, the fact that we're all having to talk to each
00:00:41 14 other through these masks, stay seated, keep that
00:00:44 15 microphone front and center. And the counsel will
00:00:47 16 benefit from this too. The orientation of the
00:00:50 17 microphone, we've learned, really is very important, Mr.
00:00:52 18 Gray. It's got to be kind of pulled towards you and
00:00:56 19 centered. But if you have trouble communicating, I'll
00:01:02 20 address it and try to fix it.

00:01:04 21 So the crime is maliciously damaging
00:01:12 22 property by means of fire.

00:01:16 23 Have you read the presentence report, sir?

00:01:20 24 THE DEFENDANT: Yes.

00:01:20 25 THE COURT: Good. Have you had enough time

00:01:22 1 to talk with Mr. Gray so that you feel ready today to be
00:01:26 2 sentenced?

00:01:26 3 THE DEFENDANT: Yes.

00:01:27 4 THE COURT: All right. Going forward then,
00:01:32 5 there were some very sad events that unfolded. Many
00:01:41 6 people were hurt; property was destroyed needlessly in
00:01:46 7 Raleigh in May of 2020.

00:01:49 8 You set a fire in the Budacai restaurant.
00:01:57 9 You stole the cash register as well.

00:02:01 10 And then you moved on to the General Dollar
00:02:03 11 or the Dollar General Express in Raleigh, and you set a
00:02:08 12 fire in there, destroyed the whole building. \$354,379
00:02:20 13 in damage is what's been estimated.

00:02:23 14 Then you moved on to your employer's
00:02:26 15 premises, Red Hat. You removed your shirt and set it on
00:02:31 16 fire, but you extinguished it.

00:02:36 17 And when you were interviewed, you variously
00:02:39 18 gave some excuses about how you were threatened to take
00:02:42 19 the actions that I've described and bullied, but it
00:02:45 20 didn't appear to be true, as also discussed in the
00:02:51 21 presentence report.

00:02:52 22 Obviously your life for a significant part
00:02:58 23 of time played itself out in Alaska, and you collected a
00:03:06 24 lot of convictions there beginning at the age of 18:
00:03:10 25 trespassing, theft, violating release conditions,

00:03:16 1 escape, stealing a vehicle, giving false information,
00:03:22 2 theft, criminal mischief, disorderly conduct, illegal
00:03:30 3 use of a phone, threatened to blow up someone's
00:03:34 4 residence, escape, misconduct involving a controlled
00:03:39 5 substance, false information.

00:03:40 6 And then you moved on to Wake County, North
00:03:47 7 Carolina. At the age of 23 you began your contact with
00:03:50 8 the criminal justice system on this side of the country:
00:03:54 9 trespassing on a railroad, possession of marijuana
00:03:59 10 paraphernalia, possession of drug paraphernalia,
00:04:01 11 trespassing, financial card fraud, attempted financial
00:04:06 12 card theft.

00:04:12 13 So very unfortunately at the age of 27 you
00:04:14 14 come into this courtroom with 16 criminal history
00:04:18 15 points, and that puts you in the highest category,
00:04:21 16 that's a VI.

00:04:24 17 And there are all these other arrests on
00:04:26 18 your record that, again, put you in contact with the
00:04:29 19 criminal justice system, but they don't change that
00:04:31 20 score.

00:04:36 21 Your family background was difficult.
00:04:40 22 There's no getting around that, and I don't minimize
00:04:45 23 that for one moment. You were deprived of food, saw
00:04:58 24 your mother being beaten, only met your father once, and
00:05:06 25 left to care for -- well, that's not correct, but you

00:05:20 1 said you felt like you were not allowed to have a
00:05:23 2 childhood.

00:05:24 3 THE DEFENDANT: Yes.

00:05:29 4 THE COURT: And you were homeless for a
00:05:31 5 period of time.

00:05:36 6 And you've had a mental competency
00:05:39 7 evaluation in this case, and you've been ruled
00:05:45 8 competent.

00:05:47 9 You've been diagnosed with a borderline
00:05:49 10 personality disorder, borderline intellectual
00:05:53 11 functioning, cocaine use disorder, methamphetamine use
00:05:56 12 disorder, cannabis abuse disorder, unspecified
00:06:02 13 depressive disorder, attention deficit hyperactivity
00:06:06 14 disorder, and post-traumatic stress. There have been
00:06:13 15 some attempts made by you to kill yourself, and you have
00:06:20 16 variously been in contact with mental health
00:06:24 17 professionals since the age of seven.

00:06:30 18 Your drug use history is significant and
00:06:33 19 covers just about everything.

00:06:37 20 And you don't have a high school diploma.
00:06:44 21 You felt like you were picked on, and you were
00:06:50 22 suspended. And ultimately you just were disconnected
00:06:58 23 from high school education.

00:07:02 24 You've got a very little bit of an
00:07:04 25 employment history.

00:07:10 1 And the total offense level, the probation
00:07:13 2 office thinks, is a 21. And this appears correct.

00:07:17 3 And so I'm advised to consider a sentence
00:07:20 4 somewhere between 77 to 96 months. By law I cannot
00:07:26 5 sentence you to less than five years in prison, and I
00:07:30 6 can't sentence you to more than 20 years in prison.
00:07:34 7 Your behavior can be supervised for three years. The
00:07:38 8 fine could be as much as a quarter of \$1 million. And
00:07:42 9 there's the money that's owed because you burnt down the
00:07:45 10 dollar store, \$354,379.22. And a \$100 special
00:07:55 11 assessment.

00:07:59 12 And it's my duty to decide a sentence that's
00:08:04 13 going to fix this. And I find that duty very difficult
00:08:09 14 to discharge in this case. It's my duty to do the
00:08:14 15 following in fixing this: To take into consideration
00:08:19 16 your background and your history, the nature and
00:08:22 17 circumstances of the instant offense, the need to
00:08:26 18 discourage this type of conduct, to promote respect for
00:08:30 19 the law, to protect the public, and the need for
00:08:35 20 treatment.

00:08:39 21 And there's a compelling need for treatment,
00:08:43 22 and there's some deep-seated issues that you're going to
00:08:49 23 have with you for the rest of your life.

00:08:53 24 So, Mr. Gray, what do you think is a
00:08:56 25 sentence that does what it needs to do in this case?

00:09:06 1 MR. GRAY: Well, Your Honor, I certainly do
00:09:07 2 not envy the position of the Court when it comes to Mr.
00:09:11 3 Rubalacava, because unfortunately Mr. Rubalacava is the
00:09:16 4 example of what takes place when there is that
00:09:18 5 intersection between the need for a mental health system
00:09:22 6 to help those like Mr. Rubalacava, but there is none
00:09:25 7 around. And unfortunately it looks as though the desire
00:09:29 8 is to place folks like Mr. Rubalacava into perpetual
00:09:35 9 incarceration. And unfortunately, Your Honor, that's
00:09:41 10 not due to Mr. Rubalacava and his background.

00:09:44 11 The Court is more than aware of his history,
00:09:48 12 the fact that he has 17 paragraphs of criminal
00:09:52 13 convictions, not including other interactions with the
00:09:57 14 Court. But it's pretty clear that the basis for all of
00:09:59 15 that interaction, these criminal convictions, is truly
00:10:03 16 an issue that resolves within the issue of his mental
00:10:09 17 health.

00:10:09 18 Mr. Rubalacava, as the Court has noted, has
00:10:13 19 had at least one evaluation by the Federal Bureau of
00:10:18 20 Prisons, an evaluation done by an expert that we
00:10:21 21 provided, and all of those point to the same issues,
00:10:24 22 which is Mr. Rubalacava has a host of issues involving
00:10:28 23 mental health that ultimately need to be addressed.

00:10:32 24 We'll cite the Dr. Ross report because Dr.
00:10:35 25 Ross as well as Dr. Hilkey both have made the finding

00:10:39 1 that it's not an issue beyond resolution. And I think
00:10:42 2 that is the bright spot within Mr. Rubalacava's case.

00:10:46 3 Mr. Rubalacava is not a mean-spirited
00:10:49 4 person. He is not a person who is acting for the sake
00:10:52 5 of trying to just take money and things of that nature.
00:10:56 6 Unfortunately, Your Honor, when he was arrested for
00:10:59 7 these events that took place during the course of the
00:11:01 8 protest, he was aligning himself with those who wanted
00:11:07 9 to do other things during the course of that protest.
00:11:10 10 He is caught up into the spirit of many people who are
00:11:15 11 trying to do bad, and he got caught up in that. A lot
00:11:19 12 of that is because of how he has -- his mental health
00:11:22 13 issues to essentially make him a little bit more
00:11:29 14 susceptible to that kind of treatment.

00:11:31 15 But, Your Honor, when we look at what took
00:11:33 16 place that night, it all began when Mr. Rubalacava tried
00:11:36 17 to set a green plant leaf on fire in the Budacai
00:11:44 18 restaurant. This isn't a plant that was going to catch
00:11:47 19 on fire, the video showed did not catch on fire. Mr.
00:11:51 20 Rubalacava left. He was told to go back in and take
00:11:54 21 some stuff. We see that as a repeated trend throughout
00:11:58 22 that night; he's coerced into making things happen. And
00:12:01 23 he's not doing this because he isn't aware of what he's
00:12:04 24 doing; he clearly knows what he's doing. But I think it
00:12:07 25 just shows a level of susceptibility that a person in

00:12:10 1 his mind set has with regard to these sort of
00:12:13 2 activities. And it's clear this is something that's
00:12:15 3 been a component of his life for at least since he was
00:12:19 4 seven.

00:12:20 5 Unfortunately, some of these issues are
00:12:23 6 related to physical. He did have a television that fell
00:12:26 7 on his head. The environment; he was raised in an
00:12:31 8 environment that was less than idyllic, including
00:12:34 9 physical abuse. He also has a number of intellectual
00:12:40 10 deficits that unfortunately compound a lot of the
00:12:43 11 problems; he has difficulty reading. We spent a lot of
00:12:47 12 time walking through and reading documents to Mr.
00:12:50 13 Rubalacava because that's the sort of assistance that he
00:12:52 14 needs. He ultimately can and does understand what's
00:12:55 15 going on, Your Honor, so he is not at the point where he
00:12:58 16 doesn't understand what's going on. But I do think it's
00:13:01 17 important for the Court to understand that a lot of
00:13:03 18 what's going on as to why this is happening results from
00:13:08 19 his mental difficulties as well as his background and,
00:13:12 20 more importantly, the help that he needs.

00:13:15 21 Mr. Rubalacava can be helped. Dr. Ross and
00:13:20 22 Dr. Hilkey note in their report that when he's medicated
00:13:24 23 and he's given a structured environment, he does tend to
00:13:28 24 thrive. When he was at FMC Butner for the course of
00:13:31 25 this evaluation, Richard was given the opportunity to be

00:13:34 1 an assistant and help with those that were at the FMC
00:13:40 2 that needed additional care. It was while he was acting
00:13:42 3 in that role that he ultimately thrived. It gave him a
00:13:46 4 job; it gave him responsibility; it gave him a chance to
00:13:48 5 exercise his ability to care and nurture.

00:13:51 6 THE COURT: What's that type of job called?
00:13:53 7 Are you an orderly?

00:13:55 8 MR. GRAY: An orderly, Your Honor. He's an
00:13:57 9 orderly. I think the official term is "custodian" at
00:13:59 10 that level, but he is an orderly to help out with those
00:14:03 11 who are in the unit.

00:14:08 12 We note this, Your Honor, because I think
00:14:09 13 when we look at the question of Mr. Rubalacava, his
00:14:11 14 history is one where if we just continually incarcerate
00:14:15 15 him and keep him behind bars for the rest of his life, I
00:14:19 16 don't think we're doing him a service, nor do I feel
00:14:22 17 that we're fulfilling the obligations under 3553(a).
00:14:25 18 However, we can help give him the structure and the
00:14:28 19 medication that he needs while he's in custody.

00:14:30 20 So we would ask, Your Honor, for -- while
00:14:34 21 he's being placed, we would like to have vocational
00:14:36 22 training as well as educational training for him so that
00:14:39 23 he can build the skills and be able to help provide for
00:14:43 24 himself. Before this all took place, Mr. Rubalacava was
00:14:46 25 homeless. He was out on the streets. As he was

00:14:50 1 homeless and without a lot of ability to help take care
00:14:52 2 of himself, he ended up using a lot of drugs. And drugs
00:14:55 3 has been something he's been doing in order to help deal
00:14:57 4 with the issues he has.

00:14:59 5 THE COURT: Can you give me some insight on
00:15:01 6 why he went from Alaska to Raleigh?

00:15:06 7 MR. GRAY: Yes, Your Honor. So his father
00:15:07 8 was stationed -- was in the Air Force, and he was
00:15:09 9 stationed up Eielson Air Force base in Alaska. Because
00:15:14 10 of his father's assignment, he was then sent back down
00:15:16 11 to Shaw Air Force base, which is in South Carolina.
00:15:19 12 That's where his family resides, near Rock Hill. He
00:15:23 13 left Rock Hill to come to Raleigh in an effort to try
00:15:27 14 to, one, get a little bit of a head start on himself.
00:15:30 15 But ultimately he was also thrown out by his family.
00:15:34 16 They had, I think, reached the end of where they felt
00:15:37 17 that they could continue to work with him. Some of that
00:15:40 18 may have been due to the fact that he had fathered a
00:15:43 19 child. Some of that also may have been due to Mr.
00:15:45 20 Rubalacava's desires to try to prove himself as being an
00:15:49 21 adult.

00:15:50 22 But I think it's consistent with the pattern
00:15:52 23 of what we've seen with Mr. Rubalacava, which is if he's
00:15:55 24 placed into an environment where he's given the
00:15:59 25 resources to thrive, he can do so. But when he's left

00:16:02 1 on his own and when he isn't given the support, he turns
00:16:05 2 to drugs as a way of medicating, and that ultimately
00:16:09 3 leads down the path towards criminality.

00:16:12 4 So, Your Honor, I think we can address a lot
00:16:14 5 of those things with mental health treatment. We would
00:16:16 6 ask for placement at FMC Butner because that was an area
00:16:20 7 where he did thrive, and they have the resources to help
00:16:23 8 provide him the care that he needs. As we cited in our
00:16:26 9 sentencing memo, unfortunately, Your Honor, a long
00:16:29 10 prison stay doesn't help him. What he really needs is
00:16:33 11 quick and ready access to medical care and mental care
00:16:36 12 so he can start to build that tool set. That's why we
00:16:40 13 remind the Court that in the reports Mr. Rubalacava is
00:16:42 14 not a lost cause. He can, in fact, build the skill set
00:16:45 15 so that he can thrive. But it will take time; it will
00:16:48 16 take effort, and it will take a structured environment,
00:16:51 17 which is why we would ask for the FMC.

00:16:54 18 Your Honor, based upon that, we would ask
00:16:56 19 that the Court consider a downward variance or departure
00:16:59 20 down to the statutory mandatory minimum of 60 months.
00:17:03 21 That will no doubt deter Mr. Rubalacava, also address
00:17:09 22 the issues with regard to general deterrence and actual
00:17:11 23 punishment for the crimes that he's committed, but it
00:17:14 24 would also give us an opportunity to get Mr. Rubalacava
00:17:17 25 into an environment where he can get the mental health

00:17:20 1 treatment and continuing care that he needs sooner
00:17:22 2 rather than later. So, Your Honor, we would ask for
00:17:25 3 those things.

00:17:26 4 I know Mr. Rubalacava has the desire to
00:17:28 5 speak to the Court and let you know a little bit about
00:17:30 6 who he is and what's moving him. I'll just note, Your
00:17:36 7 Honor, for the record that Mr. Rubalacava has a number
00:17:39 8 of difficulties when it comes to speaking. So if things
00:17:45 9 start to -- if he needs assistance, he's indicated he'll
00:17:49 10 let me know, and I might be able to pick up for him.
00:17:51 11 Thank you, Your Honor.

00:17:52 12 THE COURT: Just one moment. It looks like
00:18:01 13 in Alaska there were efforts to give him treatment, but
00:18:10 14 he kept escaping. That's what it looks like.

00:18:20 15 MR. GRAY: Your Honor, I think some of those
00:18:22 16 were also treatment related to the incarceration period.
00:18:24 17 But it -- a number of attempts at treatment were just
00:18:28 18 colocated with the jail system.

00:18:33 19 Some of his best and most profound elements
00:18:36 20 of movement were when he was at places like Holly Hill
00:18:40 21 Mental Health Hospital in Raleigh. That was something
00:18:43 22 where while he's there, he's in a structured
00:18:46 23 environment. The problem is once he gets out of that
00:18:48 24 environment and hasn't had a chance to acquire the skill
00:18:51 25 set, that's where we go off the rails.

00:18:55 1 THE COURT: Well, let me hear from the
00:18:57 2 government, and then I'll turn my attention to the
00:19:00 3 defendant, and I'd like to hear from you. But let's
00:19:04 4 hear what the government has to say to the motion for a
00:19:06 5 downward departure or variance.

00:19:09 6 MS. MENZER: Thank you, Your Honor. Your
00:19:10 7 Honor, I think that would be highly inappropriate here.
00:19:16 8 The government is clearly sympathetic to the defendant's
00:19:20 9 history. It is clear here; there's two reports from
00:19:24 10 doctors who have all concluded that he does have serious
00:19:27 11 mental health issues. But at the same time, Your Honor,
00:19:30 12 he is a danger to the community. And I think the Court
00:19:35 13 noted it appropriately by saying that there has been
00:19:39 14 efforts made, numerous efforts made by the criminal
00:19:42 15 justice system to help him. And he does -- he escapes,
00:19:47 16 and he doesn't participate. So the specific reason for
00:19:52 17 the departure, I believe Mr. Gray has noted in his
00:19:55 18 sentencing memo, is his emotional and mental health
00:19:59 19 issues was one of them. One was his age, which I would
00:20:01 20 object, Your Honor. I think he's 27 years old. He's --
00:20:07 21 I don't think his age is any -- particularly different
00:20:11 22 than other or similarly situated defendants in a federal
00:20:14 23 courtroom. So I think that would be an inappropriate
00:20:16 24 reason. But in terms of his mental health, I would note
00:20:19 25 for the Court that it's very sad that we have all read

00:20:23 1 presentence reports that contain very similar sad
00:20:26 2 upbringings. I think that his -- the efforts of the
00:20:31 3 criminal justice system to help him have not been
00:20:33 4 successful, but that was in part, based upon the PSR, it
00:20:37 5 seems in part due to his own fault. His family, it
00:20:42 6 appears, tried to help him, and they've given up. I
00:20:46 7 don't think that his particular mental health issues are
00:20:50 8 outside the heartland that you should depart from the
00:20:54 9 guidelines for that reason.

00:20:58 10 THE COURT: So your recommendation to this
00:21:02 11 Court is a sentence somewhere in the range of 77 to 96
00:21:06 12 months?

00:21:07 13 MS. MENZER: Yes, Your Honor. I would note,
00:21:08 14 if you'd like me to continue, Your Honor, I think the
00:21:11 15 most important thing here -- this wasn't my case
00:21:14 16 originally. I didn't charge it. And I spent a lot of
00:21:17 17 time over the last couple days reading newspaper
00:21:19 18 reports, reading police reports regarding everything
00:21:21 19 that happened during the riots. We personally
00:21:24 20 experienced coming back down to Raleigh and seeing all
00:21:27 21 the destruction.

00:21:29 22 I understand that the defendant wasn't part
00:21:30 23 of the original protest, which was meant to be a
00:21:34 24 peaceful protest, and instead it turned into civil
00:21:37 25 unrest. And the reports show that there were, I think,

00:21:41 1 six arsons that were started. As you cited today, the
00:21:46 2 defendant was part of at least three of those, at least
00:21:50 3 three of the fires being set.

00:21:52 4 I think that we're still being told by
00:21:56 5 counsel that he was told to do these, that he was
00:21:59 6 coerced to do these things. Your Honor, at some point
00:22:02 7 in time -- you know, he didn't just go into these stores
00:22:07 8 one time; he kept going back. When the fires didn't
00:22:11 9 light, he lit something else. When the plant didn't
00:22:14 10 light, he tried to light something else on fire in the
00:22:18 11 restaurant. Then he moved on, as you said, to the
00:22:21 12 dollar store. The dollar store luckily had sprinkler
00:22:26 13 systems. So this is a very serious crime. And the
00:22:28 14 sprinkler systems would extinguish the fire, then they
00:22:30 15 did it again. It wasn't one of these one-off where
00:22:33 16 you've just, oh, gotten excited with everything that was
00:22:36 17 going on, there's a riot going on in downtown Raleigh.
00:22:40 18 It was repetitive over and over again. He moved from
00:22:43 19 one building to the other. He went from the dollar
00:22:46 20 store the Red Hat building. He admitted that he was
00:22:48 21 also in the CVS, but he claimed he didn't do anything,
00:22:54 22 and there was no camera or video to show that he had, so
00:22:57 23 I can't say otherwise, Your Honor. But he was not being
00:23:01 24 pulled into one store and told to do something. So I
00:23:04 25 think that characterization is just not true. I think

00:23:07 1 he was an active participant.

00:23:10 2 I understand, based upon the presentence
00:23:13 3 report, he claims that he was under the influence at the
00:23:16 4 time. But his actions clearly show the Court -- which I
00:23:22 5 think is the most important part in what is so hard
00:23:25 6 about fashioning this sentence -- he is a danger. If I
00:23:29 7 was downtown, which we were told not to go, and there
00:23:32 8 was a curfew set up, he's a person I would be afraid of,
00:23:37 9 Your Honor.

00:23:38 10 In fashioning a sentence, even if it means
00:23:41 11 he needs to be incarcerated, part of the Court's duty is
00:23:44 12 to protect society. And his criminal history and his
00:23:50 13 actions on the weekend of May 30th show that his
00:23:56 14 incarceration is needed. And it's a sad fact that he
00:24:01 15 has spent his entire adult life back and forth and back
00:24:06 16 and forth.

00:24:07 17 And the crimes here, Your Honor, you'll see
00:24:10 18 a lot of times when you can read into some of what's
00:24:13 19 going on, they don't seem like that significant of
00:24:16 20 crimes, I mean, but there are -- there are some
00:24:20 21 dangerous things in here. He's had a gun before; he's
00:24:23 22 threatened people; he's unpredictable. This is the type
00:24:28 23 of behavior he showed that night, that he wasn't there
00:24:32 24 for a peaceful protest. He saw havoc going on, and he
00:24:37 25 chose to join in.

00:24:39 1 And the Court, in terms of the seriousness
00:24:46 2 of the offense, the crimes that happened that weekend
00:24:53 3 was not just property damage. Police officers were
00:24:57 4 hurt; cars were damaged. One fuels the other one. And
00:25:02 5 not to use a pun, Your Honor, when we're talking about
00:25:04 6 the arson, Your Honor, but that's what happened. And
00:25:07 7 they moved in crowds.

00:25:08 8 So I think the Court, one, needs to impose a
00:25:14 9 sentence that is sufficient not just to discourage him,
00:25:17 10 but anybody that would get -- take a lawful protest that
00:25:25 11 citizens are allowed to do and turn it into civil unrest
00:25:28 12 which caused millions and millions of dollars of damage
00:25:32 13 throughout the state. So I think for those reasons a
00:25:34 14 sentence within the guidelines is appropriate.

00:25:38 15 THE COURT: Thank you. Mr. Rubalacava, is
00:25:42 16 there anything you'd like me to know?

00:25:49 17 THE DEFENDANT: I wrote a speech. If I
00:25:51 18 could read it to you, I'd appreciate it.

00:25:53 19 THE COURT: Yes.

00:26:04 20 THE DEFENDANT: I would like to take this
00:26:05 21 opportunity to apologize to the people who I've hurt
00:26:08 22 emotionally and financially. Not a day has gone by I
00:26:18 23 haven't thought of my actions that day. I was in a bad
00:26:21 24 place in my life that day. I was homeless, off of my
00:26:23 25 medication, on drugs, away from my family.

00:26:27 1 These last months have been a wake-up call.
00:26:30 2 And honestly, it probably saved my life.

00:26:33 3 I stand before you now accepting my
00:26:37 4 responsibility for my actions. I'm making no excuses,
00:26:41 5 only letting you know my situation. I would also like
00:26:46 6 to say that my time will be spent working on myself and
00:26:50 7 becoming a better person. I will spend my time, become
00:26:55 8 a better father to my son, a better son to my parents,
00:26:59 9 and a better brother to my sibling.

00:27:02 10 I hope you all can forgive me and that today
00:27:05 11 can be a step to move forward to build the foundation
00:27:14 12 and the rebuilding of my life and my recovery.

00:27:19 13 THE COURT: Did you write that?

00:27:20 14 THE DEFENDANT: Yes.

00:27:23 15 THE COURT: Well, it's well thought out. I
00:27:25 16 hope you can realize those ambitions.

00:27:31 17 What's so disturbing is this escalation of
00:27:36 18 conduct and the fact that -- the propensity that you
00:27:42 19 demonstrated in Raleigh, it feeds off of basically nine
00:27:51 20 years of your behavior where you demonstrated disrespect
00:27:58 21 for the property rights of others and for authority and
00:28:05 22 for people's efforts to help you, which is something I'm
00:28:11 23 thinking about with respect to your lawyer's arguments
00:28:16 24 about punishment.

00:28:18 25 But let's go back and let's look at 2012.

00:28:22 1 You trespassed, you steal a debit card, and you try to
00:28:26 2 steal a bicycle.

00:28:27 3 And the next month you're very young, and
00:28:32 4 you steal a car. Then there's a protective order
00:28:37 5 against you -- well, you were 18 when the car theft took
00:28:45 6 place, and you were leading on, I suppose, two
00:28:52 7 13-year-olds. They were the young ones.

00:28:55 8 And somebody takes out a protective order
00:28:58 9 against you, and you go to their house, and you ring
00:29:00 10 their doorbell. That's not respectful.

00:29:06 11 And then you escape from what appears to be
00:29:09 12 a treatment center, and then you steal a van. And you
00:29:17 13 give the police a false name, and that's something
00:29:20 14 you've done several times. And you didn't show any
00:29:24 15 respect for the terms of supervision. And that's back
00:29:29 16 in 2012.

00:29:31 17 And then you steal from a J.C. Penney. And
00:29:35 18 you come back the next week, and you engage in
00:29:38 19 disorderly behavior; you knock over three mannequins and
00:29:43 20 you damage them.

00:29:45 21 Just like, in a much smaller way, you go
00:29:48 22 into that restaurant, and you try to set the plant on
00:29:51 23 fire. Just like you go in the Dollar Express and you
00:29:57 24 set a fire, and you're stealing.

00:30:05 25 Disrespect for your probation officer; you

00:30:07 1 show up in 2015 with cocaine on your person.

00:30:14 2 And you're engaging in financial fraud, and
00:30:18 3 you're trespassing.

00:30:27 4 There is a real need to protect the public
00:30:29 5 from someone as erratic, irresponsible, and bent on
00:30:35 6 committing crime who's been resistant to efforts to
00:30:40 7 help. And there's a compelling need to take into
00:30:44 8 consideration your mental health issues and your
00:30:51 9 upbringing that manifest themselves now. But I don't
00:30:57 10 believe a sentence outside the guideline range is going
00:31:03 11 to accomplish all of the purposes of sentencing here.
00:31:08 12 You're not that young that you should get a break.
00:31:13 13 You've been doing this for almost a decade. And you
00:31:21 14 know right from wrong. And you're calculated and
00:31:28 15 devious.

00:31:33 16 A sentence of 85 months accomplishes the
00:31:36 17 purposes of sentencing. That's going to protect the
00:31:39 18 public from you for a significant period. That's going
00:31:45 19 to discourage you and others from highjacking a peaceful
00:31:55 20 protest and turning it into a feeding frenzy of
00:32:02 21 destruction.

00:32:10 22 And let's talk about treatment. I will
00:32:12 23 recommend you to Butner, and I will recommend you for
00:32:17 24 mental health treatment, for further vocational training
00:32:29 25 and education. And I'm going to recommend you for the

00:32:31 1 most intensive substance abuse treatment program, and I
00:32:35 2 hope you get in. And I hope do you right. And I hope
00:32:39 3 it helps. I really do. And I really hope the mental
00:32:43 4 health treatment helps.

00:32:46 5 Now, when you get out of prison you're going
00:32:48 6 to be supervised for three years. You can't break any
00:32:51 7 law. You can't possess a weapon or drugs. Now, we have
00:32:56 8 some other mandatory conditions you'll have to comply
00:32:59 9 with, and we've got some standard ones. Follow the
00:33:04 10 directions of your probation officer. We all want you
00:33:08 11 to succeed. You won't be able to live someplace that
00:33:16 12 hasn't been preapproved, but your officer is going to
00:33:18 13 help you find a place to live. And you're going to have
00:33:22 14 to be truthful and honest when you deal with your
00:33:25 15 officer. You're going to have to work. And your
00:33:28 16 officer is going to help you with that. So it's really
00:33:34 17 a blessing for you; take advantage of it. Don't do what
00:33:39 18 you've done in the state system and show the disrespect
00:33:42 19 that you've done.

00:33:49 20 And there are some special conditions for
00:33:51 21 you: mental health treatment, drug treatment and
00:33:58 22 detection, cooperating in the collection of DNA. I want
00:34:04 23 you to provide regular reports to your probation officer
00:34:07 24 about your efforts to get a job, keep a job. I don't
00:34:10 25 want you to use alcohol, go to bars; I don't want you to

00:34:15 1 be around people that are drinking. You'll submit to a
00:34:20 2 search at any time with or without a warrant and by any
00:34:25 3 law enforcement or probation officer of your person,
00:34:27 4 your property, your papers, your computer or other
00:34:31 5 electronic communication or storage device upon
00:34:36 6 reasonable suspicion concerning a violation of a
00:34:40 7 condition of supervised release or unlawful activity, or
00:34:44 8 by any probation officer in the lawful discharge of that
00:34:48 9 officer's supervisory functions.

00:34:54 10 And you'll make restitution -- it's a lot of
00:34:58 11 money -- in the amount of \$354,379.22. And that's owed
00:35:07 12 to the Dollar General Express. I'm not going to put
00:35:11 13 interest on it. You'll pay it through the Inmate
00:35:17 14 Financial Responsibility Program at the drib and drab of
00:35:21 15 \$25 a quarter. And when you get out of prison I'll give
00:35:24 16 you 60 days to get settled, then let's start paying it
00:35:27 17 back at the rate of at least \$50 a month. If your
00:35:33 18 probation officer thinks you can do more or need to do
00:35:35 19 less, the officer has the authority to change that.

00:35:39 20 You need to support your dependent as well.

00:35:44 21 So you've got these money obligations; you
00:35:46 22 can't open up new lines of credit or undertake charges
00:35:51 23 unless you have the permission of your probation
00:35:53 24 officer. And you have to provide your officer financial
00:35:58 25 information like pay stubs, bank account records, that

00:36:03 1 kind of information when your officer requests. And
00:36:08 2 this is all related to the nature of the instant
00:36:10 3 offense, your background and your history, and the need
00:36:13 4 to effectively supervise you.

00:36:19 5 No fine.

00:36:25 6 All right. Is there anything else, Mr.
00:36:27 7 Gray, that I haven't already considered?

00:36:33 8 MR. GRAY: Your Honor, just to make it as a
00:36:37 9 clear recommendation, we are asking for a recommendation
00:36:40 10 for the Federal Medical Center at Butner as opposed to
00:36:43 11 one of the other two locations. We're just making that
00:36:47 12 as the recommendation. We understand the BOP ultimately
00:36:51 13 will have to make that assessment, but that's what we're
00:36:54 14 requesting.

00:36:57 15 THE COURT: The basis being the mental
00:37:00 16 health issues?

00:37:01 17 MR. GRAY: Yes, Your Honor, the mental
00:37:02 18 health issues as evaluated and determined by the folks
00:37:05 19 who did the evaluation at the Mental Health Center there
00:37:08 20 at Butner.

00:37:08 21 THE COURT: All right. I will expressly
00:37:11 22 recommend the Federal Medical Center at Butner in the
00:37:16 23 judgment.

00:37:16 24 MR. GRAY: Thank you, Your Honor.

00:37:16 25 THE COURT: You're welcome.

00:37:17 1 Anything from the government?

00:37:18 2 MS. MENZER: No, Your Honor. Thank you.

00:37:20 3 THE COURT: And the other count against you

00:37:21 4 is now dismissed.

00:37:24 5 Mr. Cantafio, any other recommendations from

00:37:27 6 your office?

00:37:28 7 THE PROBATION OFFICER: No, Your Honor.

00:37:29 8 THE COURT: Okay. Do you have any

00:37:31 9 questions, sir?

00:37:32 10 THE DEFENDANT: No.

00:37:32 11 THE COURT: Okay. Where are you going to go

00:37:34 12 live when you get out of prison?

00:37:36 13 THE DEFENDANT: My aunt.

00:37:39 14 THE COURT: Where does she live?

00:37:42 15 THE DEFENDANT: At Raleigh.

00:37:43 16 THE COURT: In Raleigh?

00:37:44 17 THE DEFENDANT: Yes.

00:37:44 18 THE COURT: Were you living with her when

00:37:46 19 you were in the riot?

00:37:47 20 THE DEFENDANT: No.

00:37:47 21 THE COURT: Why not?

00:37:48 22 THE DEFENDANT: I was homeless at the time.

00:37:50 23 I wasn't trying to listen to her rules.

00:37:55 24 THE COURT: So she kicked you out?

00:37:59 25 THE DEFENDANT: Yes, according to my drug

00:38:00 1 use.

00:38:01 2 THE COURT: Does she want you back?

00:38:03 3 THE DEFENDANT: Yes.

00:38:05 4 THE COURT: That's kind. Will you follow
00:38:09 5 her rules this time?

00:38:10 6 THE DEFENDANT: Yes.

00:38:12 7 THE COURT: You see where it gets you if you
00:38:14 8 don't.

00:38:15 9 THE DEFENDANT: Yes, ma'am.

00:38:15 10 THE COURT: It sounds like you need to put
00:38:18 11 her in the corner of the people that want you to
00:38:22 12 succeed.

00:38:24 13 You need to get that GED, right?

00:38:26 14 THE DEFENDANT: Yes.

00:38:29 15 THE COURT: Well, you can appeal if you
00:38:30 16 think something is wrong with the sentence or the
00:38:32 17 conviction, but you've got to move quickly. A defendant
00:38:35 18 doesn't have a lot of time, usually only 14 days from
00:38:40 19 the date that the judgment goes on the docket. If you
00:38:42 20 can't afford the cost of an appeal, you can apply for
00:38:45 21 permission to appeal for free. And if you request, the
00:38:50 22 clerk will fill out the appeal paperwork for you.

00:38:54 23 Now, if you're lucky enough to get into some
00:38:57 24 of these programs that I've recommended you for in
00:39:01 25 prison, are you going to do it?

00:39:03 1 THE DEFENDANT: Yes.

00:39:04 2 THE COURT: Good. All right.

00:39:08 3 Well, I'll put you back in custody. Thank
00:39:10 4 you very much.

00:39:12 5 THE DEFENDANT: Thank you.

6 (Concluded at 2:54 p.m.)

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8

9 **C E R T I F I C A T E**

10

11 I certify that the foregoing is a correct transcript
12 from the record of proceedings in the above-entitled
13 matter.

14

15 /s/ Tracy L. McGurk_____

____1/19/2022____

16 Tracy L. McGurk, RMR, CRR

Date

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